IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8691 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEVDUT RAMESHCHANDRA TRIVEDI

Versus

TALATI-CUM-MANTRI

Appearance:

MR YN OZA for Petitioner

MR MC BHATT for Respondent No. 1

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 27/04/2000

ORAL JUDGEMENT

In this petition petition under Article 226 of the Constitution, the petitioner, who was at the relevant time Talati-cum-Mantri of Baraja Nagar Panchayat, has challenged the order dated 28.3.1988 suspending the petitioner from service.

2. In this petition filed in December, 1990, the ground of challenge is that the petitioner ought not to be continued under suspension after his acquittal by the criminal Court as per the judgment dated 17.11.1990

(Annexure "G" to the petition).

3. In the affidavit in reply filed on behalf of the respondent Baraja Nagar Panchayat, it is stated that the petition may not be entertained as the petitioner has availed of the alternative remedy in the Court of Civil Judge (J.D), Ahmedabad (Rural) in respect of the subject matter of the petition. It is further submitted that although the petitioner was acquitted by the Criminal Court, departmental inquiry was initiated against the petitioner and that the charges in the show cause notice issued to the petition are not identical as the charge in the criminal case.

4. In view of the aforesaid averments which are not controverted by the petitioner, it is obvious that the petitioner had availed of the alternative remedy. This Court is, therefore, not exercising its extraordinary jurisdiction under Article 226 of the Constitution. Otherwise also, in view of the uncontroverted stand of the Nagar Panchayat that the charges in the departmental inquiry are not identical as the charge in the criminal case, there is no warrant for interfering with the order of suspension. In any case, none of the counsel have pointed out the developments in the intervening period of last 9 years after admission of the petition in February, 1991. Be that as it may, the petition deserves to be dismissed and is accordingly dismissed.

Rule is discharged. Ad-interim relief granted earlier stands vacated.

April 27, 2000 (M.S. Shah, J.)
sundar/-